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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 HORTA, LLC, a Delaware limited liability
20 company,

21 Plaintiff,

22 v.

23 FEDERAL AVIATION
ADMINISTRATION, a federal agency;
24 MARION C. BLAKEY, Administrator of
the Federal Aviation Administration;
25 JOHN HOWARD, an individual in his
official capacity; and BRANDI
26 WILLIAMSON, an individual in her
official capacity,

27 Defendants.
28

CASE NO. C 05-03778 JF

[Related Case Nos. C 02-04086 JF
and C 00-20018 JF]

**STIPULATION AND [PROPOSED] ORDER
REGARDING COURT'S RULING ON
HORTA, LLC'S MOTION FOR SUMMARY
JUDGMENT AND FEDERAL AVIATION
ADMINISTRATION'S MOTIONS TO QUASH**

Complaint filed: September 19, 2005

1 WHEREAS, Horta has served discovery on the Federal Aviation Administration ("FAA"),
2 in the form of subpoenas for documents and deposition testimony relating to issues presented in
3 the Motion to Reconsider, Reopen, and Amend Judgment ("Motion to Amend") filed in the
4 related case *Horta, LLC v. City of San Jose*, Case No. C 02-04086 JF (the "*City Action*");

5 WHEREAS, on September 20, 2005 and October 14, 2005, the FAA filed motions to
6 quash Horta's subpoenas for documents and deposition testimony in the *City Action*;

7 WHEREAS, on September 19, 2005, Horta filed its Complaint in this action for
8 declaratory and injunctive relief regarding Horta's requested discovery from the FAA;

9 WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in this
10 action to compel the FAA to provide complete responses to Horta's discovery requests and to
11 provide the requested deposition testimony;

12 WHEREAS, on December 14, 2005, the FAA issued a letter of partial deviation authority
13 pursuant to 14 C.F.R. § 125.3, authorizing Fry's Electronics to operate the Boeing 727 aircraft
14 owned by Horta;

15 WHEREAS, on December 16, 2005, the Court held a combined hearing on the FAA's
16 motions to quash and Horta's motion for summary judgment;

17 WHEREAS, the Court took the motions under submission at the close of the December
18 16, 2005 combined hearing and has not yet ruled on them;

19 WHEREAS, Horta and the FAA have engaged in discussions regarding a potential
20 resolution that may eliminate the need for any further discovery, and thereby moot the issues
21 presented in Horta's motion for summary judgment and the FAA's motions to quash;

22 WHEREAS, Horta and the FAA need additional time to further pursue a potential
23 resolution;

24 WHEREAS, Horta and the FAA agree that the Court's resources should not be expended
25 on adjudicating Horta's motion for summary judgment and the FAA's motions to quash unless
26 the process that has been initiated by Horta and the FAA fails to resolve the issues presented by
27 those motions:
28

1 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action
2 that the Court's ruling on Horta's motion for summary judgment and the FAA's motions to quash
3 shall not issue unless and until the Court is informed that the process initiated by the parties has
4 failed to resolve the issues presented by those motions. The parties will update the Court at the
5 February 17, 2006 Case Management Conference, and at any subsequent case management
6 conference set by the Court, as to the expected timing of a resolution, if any.

7 Dated: February 7, 2006

KEVIN V. RYAN
United States Attorney

8
9 By 

CLAIRE T. CORMIER
Assistant United States Attorney

10
11 Dated: February , 2006

DLA PIPER RUDNICK GRAY CARY US LLP

12 By 

JAMES M. CHADWICK
DIANA NG FUNG
Attorneys for Plaintiff
HORTA, LLC

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14
15 **ORDER**

16 The parties having so stipulated and good cause appearing therefore, IT IS SO
17 ORDERED.


18
19 Dated: February 7, 2006.


HONORABLE JEREMY FOGEL
United States District Judge

KEVIN V. RYAN
United States Attorney

Dated: February 7, 2006

DLA PIPER RUDNICK GRAY CARY US LLP

By 
JAMES M. CHADWICK
DIANA NG FUNG
Attorneys for Plaintiff
HORTA, LLC

The parties having so stipulated and good cause appearing therefore, IT IS SO ORDERED.

HONORABLE JEREMY FOGEL
United States District Judge